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**SENATE BILL 866**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Kent L. Cravens**

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; ALLOWING ELECTRONIC SUBMISSION OF STATEMENTS BY LAW ENFORCEMENT OFFICERS PURSUANT TO THE IMPLIED CONSENT ACT.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended by Laws 2003, Chapter 51, Section 13 and by Laws 2003, Chapter 90, Section 6) is amended to read:**

**"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING-- GROUND FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE. --**

**A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical**

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1 tests designated by the law enforcement agency as provided in  
2 Section 66-8-107 NMSA 1978, none shall be administered except  
3 when a municipal judge, magistrate or district judge issues a  
4 search warrant authorizing chemical tests as provided in  
5 Section 66-8-107 NMSA 1978 upon his finding in a law  
6 enforcement officer's written affidavit that there is probable  
7 cause to believe that the person has driven a motor vehicle  
8 while under the influence of alcohol or a controlled substance,  
9 thereby causing the death or great bodily injury of another  
10 person, or there is probable cause to believe that the person  
11 has committed a felony while under the influence of alcohol or  
12 a controlled substance and that chemical tests as provided in  
13 Section 66-8-107 NMSA 1978 will produce material evidence in a  
14 felony prosecution.

15 B. The department, upon receipt of a statement  
16 signed under penalty of perjury from a law enforcement officer  
17 stating the officer's reasonable grounds to believe the  
18 arrested person had been driving a motor vehicle within this  
19 state while under the influence of intoxicating liquor or drugs  
20 and that, upon [his] request, the person refused to submit to a  
21 chemical test after being advised that failure to submit could  
22 result in revocation of [his] the person's privilege to drive,  
23 shall revoke the person's New Mexico driver's license or any  
24 nonresident operating privilege for a period of one year or  
25 until all conditions for license reinstatement are met,

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1       whichever is later.

2                   C.   The department, upon receipt of a statement  
3       signed under penalty of perjury from a law enforcement officer  
4       stating the officer's reasonable grounds to believe the  
5       arrested person had been driving a motor vehicle within this  
6       state while under the influence of intoxicating liquor and that  
7       the person submitted to chemical testing pursuant to Section  
8       66-8-107 NMSA 1978 and the test results indicated an alcohol  
9       concentration in the person's blood or breath of eight one  
10      hundredths or more if the person is twenty-one years of age or  
11      older, four one hundredths or more if the person is driving a  
12      commercial motor vehicle or two one hundredths or more if the  
13      person is less than twenty-one years of age, shall revoke the  
14      person's license, [ør] permit to drive or [his] nonresident  
15      operating privilege for a period of:

16                           (1)   ninety days or until all conditions for  
17      license reinstatement are met, whichever is later, if the  
18      person is twenty-one years of age or older;

19                           (2)   six months or until all conditions for  
20      license reinstatement are met, whichever is later, if the  
21      person is less than twenty-one years of age and has not  
22      previously had his license revoked pursuant to the provisions  
23      of this section, notwithstanding any provision of the  
24      Children's Code; or

25                           (3)   one year or until all conditions for

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1 license reinstatement are met, whichever is later, if the  
2 person has previously had his license revoked pursuant to the  
3 provisions of this section, notwithstanding the provisions of  
4 Paragraph (1) or (2) of this subsection or any provision of the  
5 Children's Code.

6 D. The determination of alcohol concentration shall  
7 be based on the grams of alcohol in one hundred milliliters of  
8 blood or the grams of alcohol in two hundred ten liters of  
9 breath.

10 E. If the person subject to the revocation  
11 provisions of this section is a resident or will become a  
12 resident within one year and is without a license to operate a  
13 motor vehicle in this state, the department shall deny the  
14 issuance of a license to ~~him~~ the person for the appropriate  
15 period of time as provided in Subsections B and C of this  
16 section.

17 F. A statement signed by a law enforcement officer,  
18 pursuant to the provisions of Subsection B or C of this  
19 section, shall be sworn to by the officer or shall contain a  
20 declaration substantially to the effect: "I hereby declare  
21 under penalty of perjury that the information given in this  
22 statement is true and correct to the best of my knowledge."  
23 The statement may be signed and submitted electronically in a  
24 manner and form approved by the department. A law enforcement  
25 officer who signs a statement, knowing that the statement is

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1 untrue in any material issue or matter, is guilty of perjury as  
2 provided in Section 66-5-38 NMSA 1978. "

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